

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 103 (G. S. ch. 117).

APPEALS AND WRITS OF ERROR IN CRIMINAL CASES.

Sections.

- 6861. When allowed.
- 6862. Stay of proceedings on appeal.
- 6863. Writ of error, by whom granted.
- 6864. Stay of proceedings on writ of error.
- 6865. Return to supreme court.
- 6866. Bill of exceptions.

Sections.

- 6867. Proceedings in appellate court.
- 6868. Recognizance on appeal.
- 6869. Committal of defendant.
- 6870. Dismissal of appeal.
- 6871. Certifying proceedings to supreme court.
- 6872. Stay of other cases.

SEC. 6861. **When allowed.**—Criminal cases may be removed by the defendant to the supreme court, by appeal or writ of error, at any time within six months after judgment,* or after the decision of a motion denying a new trial; but if the order denying a new trial is affirmed upon hearing upon the merits, no appeal shall be allowed from the judgment.

G. S. ch. 117, § 1, as amended 1870, ch. 76, § 2. Amendment below *, and substitution of word "judgment" for "conviction." 2 M. 123, 224; 8 M. 214; 10 M. 63; 21 M. 462.

SEC. 6862. **Stay of proceedings on appeal.**—When an appeal is taken, it shall not stay the execution of the judgment, unless an order to that effect is made by the judge who tried the cause, or a judge of the supreme court. Notice of the appeal and the order staying proceedings, if any, shall be filed with the clerk of the court where the judgment is entered, and served on the attorney-general.

G. S. ch. 117, § 2. 24 M. 175.

SEC. 6863. **Writ of error, by whom granted.**—No writ of error upon a judgment for any capital offence shall issue, unless allowed by one of the judges of the supreme court, after notice given to the attorney-general.

G. S. ch. 117, § 3.

SEC. 6864. **Stay of proceedings on writ of error.**—Writs of error upon judgment in all other criminal cases shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless allowed by one of the judges of the supreme court with an express order thereon for a stay of proceedings on the judgment or sentence.

G. S. ch. 117, § 4.

SEC. 6865. **Return to supreme court.**—Upon an appeal being perfected, or a writ of error filed with him, the clerk shall transmit to the supreme court a copy of the judgment roll, and of the bill of exceptions, if any.

G. S. ch. 117, § 5.

SEC. 6866. **Bill of exceptions.**—Any person who is convicted of a crime before the district court or court of common pleas aforesaid, being aggrieved by any opinion, direction or judgment of the court in any matter of law, may allege exceptions to such opinion, direction or judgment; which exceptions, being reduced to writing in a summary manner, and presented to the court any time before the end of the term,* or at any special term thereafter which the court may designate for such purpose,* and being found conformable to the truth of the case, shall be allowed and signed by the judge,† and may be used on a motion for a new trial, and, when judgment is rendered, shall be attached to and become a part of the judgment-roll.

G. S. ch. 117, § 6, as amended 1870, ch. 76, § 3. Amendment between ** and below †. 4 M. 379; 23 M. 352; 33 M. 36.

SEC. 6867. Proceedings in appellate court.— No assignment of errors or joinder in error is necessary upon any writ of error issued in a criminal case; but the court shall proceed on the return thereto, and render judgment upon the record before them. If the court affirms the judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If it reverses the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require.

G. S. ch. 117, § 7. 26 M. 495.

SEC. 6868. Recognizance on appeal.— If, upon appeal or writ of error, a party is admitted to bail, he may recognize to the state of Minnesota in such sum as the judge shall order, with sufficient sureties, for his personal appearance at the supreme court of the then next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace, and be of good behavior; and the judge may, in his discretion, allow any person so to recognize, charged with an offence not punishable with death.

G. S. ch. 117, § 8. 24 M. 367.

SEC. 6869. Committal of defendant.— If any person, so appealing or taking a writ of error, does not so recognize, he shall be committed to prison to await the decision of the supreme court; and, in that case, the clerk of the court in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof, and consider and decide the questions of law, and shall render judgment or make such order thereon as law and justice require; and if a new trial is ordered, the cause shall be remanded to the said district court for such new trial.

G. S. ch. 117, § 9. 3 M. 246; 26 M. 495.

SEC. 6870. Dismissal of appeal.— If any of the provisions herein made requisite to the taking of an appeal or a writ of error are not complied with, the supreme court may dismiss the same; but no discontinuance or dismissal of an appeal or writ of error in the supreme court shall preclude the party from suing out another writ of error, or taking another appeal, in the same cause, within the time limited by law.

G. S. ch. 117, § 10.

SEC. 6871. Certifying proceedings to supreme court.— If upon the trial of any person who shall be convicted in any district court, or in the court of common pleas of Ramsey county, or if, upon any demurrer to an indictment, or to a special plea or pleas to an indictment, or upon any motion upon or relating to an indictment, any question of law shall arise, which, in the opinion of the judge of such court, shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it or consent thereto, report the case, so far as may be necessary to present the question or questions of law arising therein, and certify the said report to the supreme court of the state; and thereupon all proceedings in said cause shall be stayed until the decision of said supreme court shall be made.

1870, ch. 76, § 1: "An act to amend chapter 117 of the statutes of Minnesota, relating to appeals and writs of error in criminal cases." Approved March 8th. 23 M. 29, 31; 33 M. 25; 27 M. 524; 41 N. W. 363.

SEC. 6872. Stay of other cases.— Other criminal causes in said court involving or depending upon the same questions may, if the defendants desire or consent thereto, be stayed in like manner until the decision of the cause so certified.

1870, ch. 76, § 2.